IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 136 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

1 to 5 No

KG JADAV & OTHERS

Versus

DESK OFFICER

Appearance:

1. Special Civil Application No. 136 of 2001

MR PH PATHAK for Petitioners No. 1-3

MR MUKESH R SHAH for Respondents No. 1

MR BIPIN I MEHTA for Respondent No. 2

CORAM : MR.JUSTICE D.H.WAGHELA

Date of decision: 26/12/2001

C.A.V. JUDGEMENT

1. The three petitioners have, by filing this petition under Article 226 of the Constitution,

challenged the order of the Government refusing to make a reference of the dispute for the reasons that "the dispute has been raised after a lapse of seven years without any justification for the long delay." Even while issuing Notice, this Court (Coram: A.R.Dave, J.) had left it open to the respondent authorities to reconsider their decision dated 29.9.2000 in view of the fact that the petitioners had approached the Central Administrative Tribunal for redressal of their grievances.

2. The relevant facts in brief are that the petitioners claiming to have completed 240 days of service in each year, approached the Central Administrative Tribunal, Ahmedabad Bench for the protection of their service by filing Original Application No.343 of 1993. After admission of that application, when it was placed for final hearing, it was found that the Tribunal did not have the jurisdiction to entertain the same and hence the application was withdrawn with liberty to approach the appropriate forum. Thereafter, by a representation dated 6.1.2000, the petitioners approached the Assistant Commissioner of Labour with the grievance that their services were terminated with effect from 16.7.1992 without following the legal provisions and in violation of the provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (`the Act' for short). It was specifically mentioned in the representation that after several representations to the Department, the petitioners had approached the Central Administrative Tribunal by filing Original Application No.343 of 1993 and after withdrawing the same, the disputes were being raised for being adjudicated by a forum under the Act.

3. In the facts as above, the demand and dispute of the petitioners had never ceased to exist but, in fact, were being agitated before a forum which ultimately was found to have no jurisdiction. Therefore, it cannot be said that on the day the disputes were raised for the purpose of reference, they were not existing and the Government lacked the power to refer the same. The conclusion and ground referred in the impugned order that the dispute had been raised after a lapse of seven years without any justification is not sustainable in the peculiar facts of the present case. The Court finds substance in the argument of the learned counsel for the petitioners that the impugned order is made without application of mind to the facts brought to the notice of the authority through the representation and the failure report of the Conciliation Officer.

4. It is well-settled that the decision of the Government to refer or not to refer a dispute is an administrative function, but it is required to satisfy itself on the facts and circumstances brought to its notice to find out whether an industrial dispute exists or is apprehended. Although the order is based on the subjective satisfaction of the Government, it is subject to judicial review and if it appears from the reasons required to be given to refuse to make a reference that the Government took into account any consideration which was irrelevant or foreign material, the Court may have an occasion to interfere.

5. As it is found in the facts of the present case that the dispute subsisted and continuing to exist at the time when the reference was sought, it is necessary in the interest of justice to direct the Government to reconsider its decision.

6. For the foregoing reasons, the impugned order dated 29.9.2000 is set aside and allowing the petition the Government is directed to reconsider the matter of referring the disputes of the petitioners for adjudication and make a fresh order in accordance with the provisions of the Act and in light of the observations made in this judgment within six weeks from the receipt of a copy of this order. Rule is made absolute accordingly with no order as to costs.

Sd/-

(D.H.Waghela, J.)

(KMG Thilake)